



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/141657

PRELIMINARY RECITALS

Pursuant to a petition filed June 15, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a hearing was held on September 04, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has established an overpayment of child care funds against the petitioner because petitioner was not working and was not in any approved W-2 activity.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Second Floor
Madison, Wisconsin 53703-2866

By: Darryl Caper

Milwaukee County Department of Human Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was not working and not in a qualifying W-2 activity between January 1, 2011 and September 30, 2011 for the entire hours authorized for her children's care.

3. Petitioner received child care benefits for her three children while she was not working nor in any W-2 activity from January 1, 2011 and September 30, 2011.
4. By a notice dated May 31, 2012 the agency informed petitioner that she was overpaid \$1547.05 (claim # [REDACTED]) in child care provided from January 1, 2011 and September 30, 2011.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal governing body, Wisconsin works agency or department shall provide notice of the overpayment to the liable person. The department shall give that person an opportunity for a review following the procedure specified under s. 49.152, if the person received the overpayment under s. 49.141 to 49.161, and for a hearing under ch. 227. Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing policies and procedures to administer this subsection. The rules shall include notification procedures similar to those established for child support collections...

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). These overpayments are to be recovered regardless of who was at fault. In other words, in theory the *agency* could have made an error here and petitioner could still be held responsible for the overpayment, as she could have received child care funds for which she was not eligible.

A parent is eligible for child care services if she needs the care to:

1. Meet the school attendance requirement under s. 49.26 (1) (ge).
 - 1m. Obtain a high school diploma or participate in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation, if the individual is not subject to the school attendance requirement under s. 49.26 (1) (ge) and at least one of the following conditions is met:
 - a. The individual is 18 or 19 years of age.
 - b. The individual has not yet attained the age of 18 years and the individual resides with his or her custodial parent or with a kinship care relative under s. 48.57 (3m) or with a long-term kinship care relative under s. 48.57 (3n) or is in a foster home licensed under s. 48.62, a subsidized guardianship home under s. 48.623, a group home, or an independent living arrangement supervised by an adult.
2. Work in an unsubsidized job, including training provided by an employer during the regular hours of employment.
3. Work in a Wisconsin works employment position, including participation in job search, orientation and training activities under s. 49.147 (2) (a) and in education or training activities under s. 49.147 (3) (am), (4) (am) or (5) (bm).
- 3m. Participate in a job search or work experience component of the food stamp employment and training program under s. 49.79 (9).
4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education, including an English as a 2nd language course; literacy tutoring; or a course of study meeting the standards established by the state superintendent of public instruction under s. 115.29 (4).

for the granting of a declaration of equivalency of high school graduation. An individual may receive aid under this subdivision for up to 2 years.

5. Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

Wis. Stat., §49.155(1m); See also Wisconsin Shares Child Care Assistance (WSCCA) Manual, §1.5.0, available online at <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. When a parent is ineligible for child care and receives the benefit anyway, the agency must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover the overpayment. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, WSCCA Manual, §2.1.5.1.

Petitioner's argument at hearing was that she didn't know that she could not use the child care as she had done. However, the agency is not asserting here that she was doing anything intentional or fraudulent. I have reviewed the calculations and find no errors. Since I can find no errors and the benefits can be recovered regardless of fault, I must uphold the agency's determination. While petitioner may find my decision unfair, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. Accordingly, I must uphold the agency's overpayment determination.

CONCLUSIONS OF LAW

Petitioner was overpaid child care benefits (claim # [REDACTED]) because she received those benefits when she was not working and was not in any approved W-2 activity.

THEREFORE, it is

ORDERED

That the petition for review herein is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

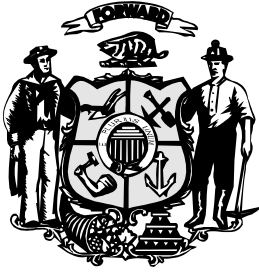
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of September, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email
Department of Children and Families - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 6, 2012.

Milwaukee County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud